



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

F.#2010R00420

*271 Cadman Plaza East
Brooklyn, New York 11201*

March 19, 2012

By Hand Delivery and ECF

The Honorable Frederic Block
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Pedro Espada, Jr. et al.
Criminal Docket No. 10-985 (S-2) (FB)

Dear Judge Block:

On February 4, 2012, the government moved in limine to preclude the defendants from arguing to the jury that Pedro Espada, Jr.'s transfer of CEDC, his janitorial services company, to Soundview could not have taken place for technical, legal reasons. In response, the Court stated, "if any lawyer says something that is not a correct statement of the law, the judge will correct that, and will advise the jury accordingly. Ms. Necheles and Mr. Gioiella know if they say something that is not legally correct, they know I'm going to correct it. If they want to open up a claim that, as a matter of law, that something did not transpire, if I think they are wrong about that, they are running the risk of my telling the jury they are wrong."

Transcript of 2/27/12 Status Conf. at 43-44.

In her opening statement last week, Ms. Necheles argued that Espada could not have stolen money from Soundview via CEDC because CEDC was never transferred to Soundview. To support this point she made the following legal arguments:

- You can't just say I'm going to give this company and presto, boom it belongs to Soundview. You have to follow legal formalities. You have to do something. Nothing happened here. Nothing. It will be undisputed Espada kept running CEDC just like always. Soundview never got the Board minutes. There were no contracts drawn up to transfer. No stock change. Tr. at 382.

- Did this transaction takes place? . . . Still nothing happened. There's still no legal documents drawn up. No stock transferred. The evidence will show you none of this happened. Nothing happened. Tr. at 384.

Ms. Necheles - a lawyer - has now incorrectly instructed a jury of non-lawyers that Espada's transfer of CEDC to Soundview could not have taken place for technical legal reasons: because "legal formalities" were not followed, no "contracts were drawn up," and "no stock transferred."

In fact, it is hornbook law that Espada, after stating that he sold his company to Soundview in Soundview's board minutes and then representing that fact to auditors, regulators, the IRS and others for a period of five years, ratified the transfer and is estopped from claiming that it did not take place.¹ Ms. Necheles's statements that "legal formalities" such as drawing up a contract or transferring stock were legally required to effect the transfer are incorrect statements of law.

As such, the Court should (1) instruct the jury that it should take legal instruction solely from the Court and should ignore Ms. Necheles's comments concerning the legality of the transfer of CEDC, and (2) preclude Ms. Necheles from making further legal argument concerning the transfer of CEDC to Soundview. Such argument misinforms the jurors, will confuse the jurors, and improperly encroaches on the Court's domain.

Respectfully submitted,

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cc: Defense Counsel

¹ See Government's February 15, 2012 motion in limine at docket number 75.